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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-640

DWIGHT GEDULDIG, *Appellant,*

v.

CAROLYN AIELLO, Individually and on Behalf of All Others Similarly Situated, *Appellees*

DWIGHT GEDULDIG, *Appellant,*

v.

AUGUSTINA D. ARMENDARIZ, ET AL., Individually and on Behalf of All Other Women Similarly Situated, *Appellees.*

Consolidated Cases on Appeal from the United States District Court for the Northern District of California

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BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA, AS AMICUS CURIAE, IN SUPPORT OF APPELLANT

With consent of the parties, the National Association of Manufacturers of the United States of America respectfully submits this brief as *amicus curiae* in support of the appellant.

INTEREST OF THE AMICUS CURIAE

The National Association of Manufacturers (NAM) is a non-profit voluntary business association, organized as a membership corporation under the laws of the State of New York. It is composed of manufacturing and related concerns of all sizes located throughout the United States and represents a substantial portion of the nation's industrial employment. Most of its members have maternity leave policies and may, therefore, be directly affected by the Court's decision in this case.

The NAM also has an interest in this case because it involves a basic constitutional issue under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution which requires resolution and clarification by this Court. The decision below, if left standing, will have far reaching effects on labor-management relations because a substantial number of members have collective bargaining agreements which contain provisions requiring payment of fringe benefits including health and disability benefits. In addition, NAM members are subject to the provisions of Title VII of the Civil Rights Act. The decision in this case may affect the Sex Guidelines of the Equal Employment Opportunity Commission which require that pregnancies be treated the same as disabilities caused by sickness or disease. Thus the ramifications of this decision will affect basic labor management relations and policies.

Accordingly, the NAM has a proper interest in the resolution of the issues before the Court in this case.

ARGUMENT

I. There is a Rational Basis for Excluding Pregnancy from Health Insurance Benefits and that is the Proper Test to Use in Determining the Constitutionality of the Statute

In determining the constitutionality of a statute under the Equal Protection Clause of the Fourteenth Amendment this Court has used two different tests.

In the first test, the statute is subject to "strict scrutiny" and will be held invalid unless there is a "compelling" interest to be protected. This test is used where the statute involves a "fundamental" interest or if it is based on a suspect classification. See *Shapiro* v. *Thompson,* 394 U.S. 618, 627 (1969); *Graham* v. *Richardson,* 403 U.S. 365, 372 (1971).

In the other test a statute is valid unless it is without "rational basis." See *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970).

In recent decisions of this Court involving sex discrimination, *Cleveland Board of Education* v. *LaFleur,* — U.S. — (decided January 21, 1974), *Frontiero* v. *Richardson,* 411 U.S. 677 (1973), and *Reed* v. *Reed,* 404 U.S. 71 (1971), the stricter test used in the *Graham* and *Shapiro* cases was not applied. Instead, this Court examined the facts of each case to determine whether there was a "rational basis" for the classification. As this Court stated in *Reed* v. *Reed,* supra, p. 76: "The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of §§ 15-312 and 15-314." Accordingly, the application of the statute involved in the present case

will be examined to show that the exclusion of women on maternity leave has a "rational relationship" to lawful objectives.

2. The EEOC Guidelines Relating to Pregnancy Are Not Entitled to Judicial Deference

It is anticipated that the EEOC's Guidelines relating to the treatment of pregnancy will be used as a basis for the contention that there is no "rational basis" for the statute. The Guidelines provide, 29 C.F.R. § 1604.10:

> "(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities."

It is submitted that this pronouncement by the EEOC is entitled to little or no weight because the Guideline does not meet the criteria established by this Court in *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944) to be applied to agency interpretations of statutes. That case dealt with The Fair Labor Standards Act of 1938 which set a minimum wage, provided for overtime pay and regulated other employment conditions. An Ad-

ministrator was empowered to bring suits in federal courts to enforce the Act. The Administrator published "interpretive bulletins" to provide a practical guide to employers and employees as to how the Act would be applied. The lower court applied a rule contained in an interpretive bulletin to the facts of the case before it without analyzing the rule. This Court reversed that decision and meticulously stated the criteria to be applied to agency interpretations of statutes:

> "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." (page 140).

The Sex Guidelines issued by the EEOC stand on the same footing as the interpretive bulletins considered in the *Skidmore* case and the same standard should be applied to them. The Civil Rights Act was enacted July 2, 1964 with an effective date of July 2, 1965. On November 15, 1966 the EEOC General Counsel sent the following letter:

> "Gentlemen:
>
> You state that under your collective bargaining agreement male and female employees are granted sick leave with pay. Female employees, however, are granted maternity leaves without pay; although their services are not terminated. You inquire

whether this policy is in compliance with Title VII of the Civil Rights Act of 1964.

The Commission policy with respect to pregnancy does not seek to compare an employer's treatment of illness or injury with his treatment of maternity, since maternity is a temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees. Accordingly, we believe that to provide substantial equality of employment opportunity for both sexes, there must be special recognition for absence due to pregnancy, and for this reason have stated that, generally speaking, a leave of absence should be granted for pregnancy whether or not it is granted for illness. On the other hand, we do not believe that an employer must provide the same fringe benefits for pregnancy as he provides for illness, and, consequently, it is our view that the policy you describe is not in violation of Title VII.

Sincerely yours,

CHARLES T. DUNCAN
General Counsel"

This remained the consistent position of the agency until April 5, 1972, the effective date of the present Sex Guidelines. Therefore, the present Guidelines are not a "contemporaneous construction" and there has been no consistent interpretation of the statute by the agency. The General Counsel's opinion letter quoted above is the interpretation which meets the *Skidmore* criteria.

This Court has stated that where the administration of a statute has not been uniform, an agency interpretation is not entitled to the highest respect or weight. In such a case the agency interpretation will be con-

sidered only to the extent that it is supported by valid reasons. *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1 (1932); *Alexander V. Cosden Pipe Line Co.*, 290 U.S. 484 (1934). It is submitted that the reasons stated in the balance of the brief constitute a sufficient basis to uphold the constitutionality of the challenged statute.

2. Medical Evidence Demonstrates the Uniqueness of a Disability Caused by Pregnancy and This Justifies Special Treatment

The basic purpose of the California Disability Insurance Plan is to provide compensation to employees when they are disabled due to a non-job related illness or injury. Although all pregnant women experience some period of disability as the result of their pregnancy, this disability is not due to illness or injury in the vast majority of cases. One authority, Dr. John C. Donovan, testified that:

> "A I think I've testified that pregnancy per se is a normal physiologic event, that it remains normal, excluding spontaneous inevitable abortions, it remains normal somewhere around eighty to eighty-five percent of instances, that in about fifteen to twenty percent of instances the pregnancy is abnormal, that the abnormality may stem from some complication inherent in the pregnancy or the abnormality may be the result of the inner action between the lowered reserves of the woman and normal demands of the pregnancy, that by no means all of these fifteen to twenty percent of abnormal pregnancies is the patient clinically disabled with respect to usual activities.
>
> * * *
>
> Q This testimony that you have given today, is this just your own personal opinion or is this generally accepted medical opinion?

A I think I can say quite authoritatively that it is generally accepted medical opinion.[1]

Dr. Donovan also testified that the length of time women are advised to remain at home after the first seven to ten days following delivery is, for the most part, due to sociological reasons. He testified:

"I responded to your question because you said medically or clinically with the period of seven to ten days. This added three, four, five weeks, see, the doctor is wearing two hats. One hat says how long the patient is at risk or is really disabled. The other hat says, has to do with the new family unit and the mother establishing a familiarity with a knowledge of the baby and vice versa and I think the added three or four weeks generally takes in if we really dissect the reasons for it, generally taking into account this perfectly needed adaptive device in most —

Q This additional period of time of four weeks or so is really a period of time to allow the mother to adapt to the child and vice versa?

A Yes.[2]

Later Dr. Donovan explained what he meant by clinically disabled:

"By clinically disabled I have reference to the fact that she was, during this period of time, at

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[1] Testimony of Dr. John C. Donovan acting chairman of the Department of Obstetrics and Gynecology of Strong Memorial Hospital and Professor of Obstetrics and Gynecology at the University of Rochester School of Medicine, in *Franklin et al. v. Stromberg Carlson Corp. and I.U.E. Local No. 338*, Case No. CS-27069-72 et al. before the state of New York, Executive Department, State Division of Human Rights, April 18 and July 10, 1973, pp. 120-122.

[2] *Ibid.*, pp. 118-119.

risk. In that during this period of ten to twelve days there was perhaps a continuing risk of infection in the genital area. There would be a risk of hemorrhage, uterine hemorrhage. There would be a risk of thrombosis of the veins, particularly of the leg. None of these risks statistically would be as great as they would be immediately after delivery and they are decreasing almost expeditiously, very, very markedly decreasing. That's why I say ten-twelve days was conservative. Mainly she's at risk, that's what I meant by clinically."[2]

Thus the "disability" after pregnancy is more for sociological than for medical reasons. The same sociological factors are present before delivery and constitute sufficient reason to excuse women from work during that period as the following testimony demonstrates:

Q. What I understand from your testimony that such a woman could work right up to her beginning labor from a medical standpoint?

A. Medical standpoint—normal patient, medically normal patient, normal pregnancy, there is no medical reason [why] they cannot work until the onset of labor. Again, assuming the job requirements are compatible with a term abdomen.

Q. You testified that you have your own patients as well as your work at the University and the hospital. You have your own private patients?

A. That's correct.

Q. In your experience, Doctor, have all your patients worked right up to the time of delivery or labor?

A. Some. Certainly not all.

Q. And for those who haven't, why have they stopped working sooner?

A. Some would ask — many would just stop working and not bringing it to my attention in

[2] *Ibid*, pp. 594-595.

terms of an excuse, et cetera. Others would want an excuse to stop working because they felt certain preparations had to be made and buy a layette and things of that nature. They didn't feel like working. Their attentions were not so interested in the job any more. Others had mild physical symptoms. They did not feel like working.

Q. In those cases where they have asked for something in writing from you, have you given it to them?

A. Yes.

Q. Would I understand if we're looking at it strictly from a medical standpoint, medically they could continue to work?

A. Yes. If I may attempt to clarify that current contradiction, one point is that the excuse I would usually write would be that the patient should be excused from working. In other words, I'm saying she should not be made to work.

Q. However, medically such a person would not have an illness or sickness?

A. Correct. I don't think I would write an excuse saying she could not work."[4]

Based upon the expert testimony reviewed above it seems evident that the disabilities arising from pregnancy are not the same that would arise from an illness or injury. Thus much of the time women remain at home is for sociological rather than for physical reasons. Because of this, the exclusion of pregnancy from the disability insurance program has a rational relationship to the purpose of the legislation.

4. The Provisions of the Health Insurance Plan Which Exclude Maternity Benefits Are Not Discriminatory

Discrimination is different treatment of individuals under the same or similar circumstances. Legislation

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[4] *Ibid.*, pp. 600-602.

in this area and decisions of courts are based upon the premise that all people are created equal. Where a race or a sex is treated differently because of antiquated stereotypes there is unlawful discrimination. Acting upon that premise this Court has held that a provision of the Idaho Probate Code which gave preference to men over women in applying for letters of administration violated the Equal Protection Clause of the Fourteenth Amendment. See *Reed* v. *Reed,* 404 U.S. 71 (1971). Similarly state "protective" statutes which limited the weight a woman could lift on her job have been found unlawful because they prevented some women with ability from performing those jobs. See *Weeks* v. *Southern Bell Telephone & Telegraph Co.,* 408 F. 2d 228 (5th Cir. 1969); *Rosenfeld* v. *Southern Pacific Co.,* 444 F.2d 1219 (9th Cir. 1971); *Jones Metal Products Co.* v. *Walker,* 25 Ohio App. 2d 141 (1971). Billy Jean King has shown us that sex stereotypes are not accurate. There are always exceptions and that exceptional person may not be penalized because most persons in the class would not be qualified.

This disparate treatment has also been held unlawful where men were excluded from jobs because of their sex. For example, it has been held that an airline policy of hiring females exclusively for the position of flight attendant was unlawful because men could give courteous, personalized service during flights as well as women. See *Diaz* v. *Pan American World Airways, Inc.,* 442 F. 2d 385 (5th Cir. 1971), cert. denied 404 U.S. 950.

In *Willingham* v. *Macon Telegraph Publishing Co.,* 482 F. 2d 535 (5th Cir. 1973) the Court considered whether the refusal to hire a male because he had long

hair was discrimination based on sex. The Court stated, page 428, that "a grooming code requiring different hair lengths for male and female job applicants discriminates on the basis of sex within the meaning of Section 703 [of the Civil Rights Act of 1964]. Such a code treats applicants differently because of a sex stereotype: only males are prohibited from wearing their hair long. Section 703 does not permit one standard for men and another for women where both are similarly situated."

Laws and business practices were condemned in the above cases because they denied opportunity to a whole group based on an inaccurate stereotype. The NAM subscribes to the rationale used in those cases. However, the above-cited cases do not resolve the issue presented to the Court in the present case. Here we are concerned with a physical difference between men and women. Men cannot bear children. This is a physical difference between the sexes. There is no stereotype, prejudice or male chauvinism involved in the present case. We are concerned with a unique condition of women. Pregnancy cannot be equated to disabilities caused by sickness or disease because pregnancy is not a sickness or disease. Pregnancy is a condition unique to women and employers should be free to treat it as such. Women cannot be placed at a comparative disadvantage vis-à-vis men by such treatment because there is nothing to compare to men. Unique conditions may require special treatment and that should not be considered unlawful discrimination. As long as a woman is permitted to return to her job after pregnancy she is not placed at any competitive disadvantage with men. The law should require no more.

5. The Increased Cost of the Insurance Program Affords a Reasonable Basis Upon Which to Deny Benefits for Pregnancy

This case involves the California Disability Insurance Program which is attacked for the failure to treat pregnancy as a disability. The Disability Insurance Program, together with Workmen's Compensation Insurance and Unemployment Insurance constitute the insurance program of the State of California in which benefits are provided for employees. The Disability Insurance Program was designed to provide compensation to employees who became unemployed due to non-job related illnesses or injuries. This plan is financed by a one percent employee contribution. The amount of the employee contribution has remained the same since the inception of the program in 1946. Coverage has been expanded over the years as funds permitted. This history of the plan is reviewed in detail by Judge Williams in his dissenting opinion (Appellant's Jurisdictional Statement, Appendix pp. 21-26). The statistics regarding the operation of the plan show that women receive $1.37 for each dollar contributed, and men receive only $0.89 for each dollar contributed. To add pregnancy to the covered disabilities would increase the cost of the plan 30 percent (Judge Williams' opinion, Appellant's Appendix, p. 19, footnotes 1 and 2). This would necessitate raising the contribution rate or restricting benefits. Such a change, however, would frustrate the valid legislative purpose of providing the broadest coverage possible while limiting the employee contribution to one percent. Parties should be free to design an insurance program and limit benefits where necessary to accomplish its valid objectives.

The effect of the lower court's decision would be to substantially increase the cost of this and countless

other health plans throughout the country. It would encourage women to make planned use of the program by securing employment shortly before they contemplated bearing children. This type of planning is not possible with other disabilities and it could easily place substantial additional financial burdens on insurance programs. This Court has held that classifications based upon economic consideration are valid. *O'German & Young* v. *Hartford Ins. Co.*, 282 U.S. 251 (1930) and *Borden's Co.* v. *Baldwin*, 293 U.S. 194 (1934). Therefore, from a practical viewpoint there is a reasonable basis for the exclusion of pregnancy in the benefits covered.

CONCLUSION

It is respectfully submitted that based upon the unique nature of pregnancy, the fact that it does not involve competition with men, the medical evidence showing the sociological nature of the disability, and economic factors, there is a rational basis for treating a disability caused by pregnancy differently from a disability caused by sickness or disease. Therefore, such an insurance plan should not violate the Equal Protection Clause of the Fourteenth Amendment and the decision of the lower court should be reversed.

Respectfully submitted,

NATIONAL ASSOCIATION OF MANUFACTURERS
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Consolidated Cases on Appeal from the United States District Court for the Northern District of California

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BRIEF OF THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE[1]

The American Telephone and Telegraph Company, together with the Associated Bell Companies (herein-

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[1] This brief is filed pursuant to Supreme Court Rule 42(2). Written consent of Appellant and Appellees has been obtained and filed with the Clerk of the Court.

after, Bell System Companies), is the largest private employer in the nation, and almost 50 percent of its employees are women. The Bell System Companies are employers subject to the requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*, and are federal contractors subject to the requirements of Executive Order 11246, as amended by Excutive Order 11375. Both Title VII and the Executive Order prohibit employment discrimination on the basis of sex.

In connection with employment, Bell System Companies maintain disability programs which provide wage continuation benefits for employees disabled to work because of sickness or accident. While all these plans provide benefits for disability absences resulting from pregnancy complications and abnormal pregnancies, none provides wage continuation benefits for absences attributable to *normal* pregnancy and childbirth.[2]

In 1972 the Equal Employment Opportunity Commission (EEOC) revised its Sex Discrimination Guidelines, so that for the first time they interpreted Title VII as requiring that normal pregnancy be treated as a temporary disability "under any health or temporary disability insurance or sick leave plan available in connection with employment." 29 C.F.R. § 1604.10(b). Recently suits have been brought by

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[2] Each Bell System Company provides periods of uncompensated leave for pregnancy and childbearing whose length is determined on a case-by-case basis. The time of beginning and ending maternity leave is basically determined by the individual employee on the advice of her doctor.

private parties against six Bell System Companies,[3] as well as other private employers,[4] alleging that the failure to provide sickness and accident disability benefits for normal pregnancy violates Title VII. The resolution of the present case will undoubtedly have a substantial effect on the cases pending against private employers under Title VII.[5]

The impact of the decision in the present case on private employers was made even more direct by a recent announcement from the Office of Federal Contract Compliance (OFCC), which administers and enforces the Executive Order program. On December 27, 1973, OFCC invited public comments on proposed revisions to its Sex Discrimination Guidelines. 38

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[3] CWA v. Illinois Bell Tel. Co., No. 73-C-959 (N.D. Ill., Filed April 13, 1973); CWA v. Southern Bell Tel. & Tel., No. 18328 (N.D. Ga., Filed May 17, 1973); CWA v. AT&T Long Lines Department, C.A. No. 73-3353 (S.D.N.Y., Filed July 31, 1973); CWA v. New York Tel. Co., C.A. No. 73-3352 (S.D.N.Y., Filed July 31, 1973); CWA v. The Pacific Tel. & Tel. Co., C.A. No. C-73-1739 RFP (N.D. Cal., Filed Sept. 28, 1973); and CWA v. South Central Bell Tel. Co., C.A. No. 73-1771 Section A (E.D. La., Filed July 5, 1973).

[4] *E.g.*, Grogg v. General Motors Corp., 73 Civ. No. 63 (KTD) (S.D.N.Y., Filed Jan. 4, 1973); Gilbert v. General Electric Co., No. 142-72-R (E.D. Va., Filed Mar. 15, 1972). To date there are two conflicting district court decisions on the issue: *Compare* Newmon v. Delta Air Lines, Inc., — F. Supp. — (N.D. Ga. 1973), Daily Labor Report No. 18 at F-1 (Jan. 25, 1974), *with* Wetzel v. Liberty Mutual Insurance Co., — F. Supp. — (W.D. Pa. 1974), Daily Labor Report No. 15 at D-1 (Jan. 22, 1974).

[5] Now that Title VII has been made applicable to the employment practices of state and local governments by the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (March 24, 1972), the need for consistency in the principles applicable to public and private employers is particularly apperent. *See* Cleveland Bd. of Educ. v. La Fleur, — U.S. —, 42 U.S.L.W. 4186, 6 FEP Cases 1253, 1256 n.8 (January 21, 1974).

Fed. Reg. 35336-35338. Among the changes under consideration is a provision which would require federal contractors to provide sickness and accident disability benefits for absences from work due to normal pregnancy.[6] The notice which solicited comments on this proposal explained that OFCC was reconsidering "some unsettled questions regarding leave on account of the condition of pregnancy which are presently being subjected to judicial scrutiny," and specifically noted that:

> The OFCC, however, recognizes the need to continue to be guided by pertinent judicial decisions, including those expected to be rendered by the United States Supreme Court during this present term. 38 Fed. Reg. at 35337.

Thus, the Court's resolution of the present case may well determine whether OFCC adopts its proposed guideline requiring disability pay for pregnancy. It is important to emphasize that unlike EEOC's Guidelines, which do not have independent force or effect,[7] the OFCC Guidelines constitute an order to federal contractors. A failure to comply with their requirements can result in ineligibility for government contracts.[8]

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[6] This would constitute a reversal of OFCC's present position that, "There is no requirement that an employee be paid during absence [for maternity leave]." Memorandum of John L. Wilks, Director, OFCC, to Agency Heads (Nov. 12, 1970) at 5.

[7] American Newspaper Publishers Ass'n v. Alexander, 294 F. Supp. 1101, 1103 (D.D.C. 1968). *See* Espinoza v. Farah Mfg. Co., 94 S. Ct. 334 (1973).

[8] 41 C.F.R. § 60-2.2; Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 442 F.2d 159 (3d Cir.), *cert. denied*, 404 U.S. 854 (1971); Edgely Air Products, Inc., HEW Docket No. CC-1, CCH Empl. Prac. Guide ¶ 2774.20 (March 23, 1971).

In testimony before the Joint Economic Committee of Congress on the "Economic Problems of Women" on July 11, 1973, Mr.

INTRODUCTION

The Bell System Companies have been concerned with the question before the Court since the promulgation of the revised EEOC Guidelines. This concern was sharpened by the filing of six law suits challenging Bell System sickness and accident disability programs, and by OFCC's proposal to revise its Sex Discrimination Guidelines. Therefore, the Bell System Companies have had occasion to review the operation of these programs and to collect and collate extensive data regarding the present treatment of men and women under such programs; the cost and benefit impact of adding coverage for normal pregnancy; and the comparative, employment-related characteristics of maternity leaves and disability absences. Since this data relates to a very large number of employees,[9] almost half of whom are women,[10] working throughout

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George Travers, Assoc. Dir., Plans, Policies & Programs of OFCC, was asked to explain the conflict regarding maternity benefits between the OFCC Guidelines and those of EEOC. He stated that the issue was under study and then noted:

> "One of the serious questions that has arisen about our proposed revisions to the guidelines is that unlike the EEOC guidelines, our regulations would be an order to government contractors. Many of the employers are now waiting on pending suits over the guidelines to settle the questions. So that a legal question has been raised about whether or not we should order government contractors to conform to the EEOC guidelines, knowing that there are legal questions being raised."

Report of Proceedings, Vol. 2 at pp. 126-127.

[9] Bell System Companies had approximately 894,505 employees eligible for benefits in fiscal year 1970-1971, and approximately 955,752 eligible employees in fiscal year 1971-1972.

[10] Women constituted approximately 48.57% of the eligible work force in 1970-1971, and approximately 48.29% of the eligible work force in 1971-1972.

the United States, it is a reliable "sample" of evidence relevant to the issues in this proceeding.

It is of particular concern to the Bell System Companies that a good deal of the debate, and even some of the legal decisions, on the issue of mandatory maternity benefits, has proceeded in a conclusory fashion, either ignoring, or professing ignorance of, important matters of fact. For example, the EEOC reversed its long-standing interpretation on the question,[11] without any statistical analysis or reference to medical opinion.[12] Even where some information has been available, the analyses often have been based on erroneous assumptions. This is exemplified by the recent decision in *Wetzel* v. *Liberty Mutual Insurance Co.*, — F.Supp. — (W.D. Pa. 1974), Daily Labor Report No. 15 at D-1 (January 22, 1974), where the district court supported its conclusion that Title VII required that disability benefits be paid for normal pregnancy, by comparing pregnancy to the predominately male condition of "gout." Moreover, the court rejected employer justifications based on cost with the following unsupported and unsupportable conclusions:

> We may assume from a general knowledge of the conditions of life, that in the normal or usual pregnancy, the period of disability will be relatively short. There is nothing in this record to

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[11] The history of EEOC's change in interpretation, as well as the reasons why its current guideline should not be followed, is discussed in the respective amicus curiae briefs of The Chamber of Commerce of the United States of America and General Electric Company, filed in support of the Jurisdictional Statement.

[12] *See* deposition of Sonia Fuentes, former Chief of EEOC's Legislative Counsel Division, quoted in the amicus curiae brief of Delta Air Lines filed in *Cleveland Bd. of Educ.* v. *La Fleur*, supra at Appendix, 44-52.

> show, and *nothing in our general experience with life indicates that the job-related incidence of disability for pregnancy is any greater or any less than that for prostatectomy.* (Emphasis added.)

The Argument which follows, based on the actual experiences of Bell System Companies, shows that this factual assumption is dramatically erroneous.[13] Of most direct concern for the present case, the court below professed an inability to properly evaluate the comparative cost implications of covering normal pregnancy under the California disability insurance program, since, "no statistics are available indicating the cost to the program of paying benefits on account of various disabilities presently covered." *Aiello* v. *Hansen*, 359 F.Supp. 792, 798 (N.D. Cal. 1973).

In an effort to prevent further decision on these important questions from being made in a factual vacuum, the Bell System Companies responded to OFCC's request for public comments on the proposed revisions to its Sex Discrimination Guidelines by submitting a summary of pertinent data regarding the operation of their sickness and accident disability programs. Because the Court's resolution of the present case will undoubtedly influence both the determination by OFCC and the outcome of pending cases under Title VII, these public comments are attached as an appendix to this brief.[14] The Argument which follows highlights the findings in that data and is offered

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[13] *See infra* note 17 & text and *infra* note 28.

[14] This information should be especially pertinent to the present case since Bell System disability programs, like the California Unemployment Insurance Code as presently constituted, include benefits for complicated and abnormal pregnancies but do not provide benefits for normal pregnancies.

to the Court to assist it in assuring that this important legal determination, which will have a massive impact on both public and private employers, will not be based on erroneous factual assumptions.

ARGUMENT

I. Women Receive a Disproportionate Advantage Under Existing Disability Plans Even Where Benefits for Normal Pregnancy Are Not Provided

The present distribution of benefits between men and women under the sickness and accident disability plans of the Bell System Companies confirms the experience of the California Unemployment Insurance Code.[15] Even without considering absences relating to normal pregnancy, women have a greater frequency rate (number of disabilities), and severity rate (duration of disabilities) than men. In fiscal years 1970-1971 and 1971-1972, women had a higher frequency of disabilities and lost more total days from work in sixteen of the seventeen disability group classifications.[16] In 1970-1971, women accounted for 64.65% of the total days for which benefits were paid, even though they were only 48.57% of the total work force eligible for benefits. Similarly, in 1971-1972, women received compensation for 63.45% of the total benefit days

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[15] In his dissenting opinion Judge Williams noted:

> Women contribute only 28% of withholdings but draw 38% of the benefit payments. Put another way, men receive $.89 per dollar contributed while women receive $1.37 per dollar contributed.

Aiello v. Hansen, 359 F. Supp. at 802 n.1.

[16] The one exception in both periods is "Diseases of circulatory system" (Group 7), which includes heart attacks and other cardiac problems.

though representing only 48.29% of employees eligible for benefits.

The seventeen disability group classifications, with the exceptions of "Complications of pregnancy, childbirth and puerperium" (Group 11), and "Perinatal morbidity and mortality" (Group 15), contain comparable conditions, including some conditions which are unique to one sex. Thus, while prostate trouble [17] may be unique to males, when considered with other "Diseases of the genitourinary system" (Group 10), women have a considerably higher frequency rate and dramatically greater number of total days lost. [18] Likewise "gout," which *Wetzel* cited as a predominately male condition, is classified among "Endoctrine, nutritional and metabolic diseases" (Group 3), with women again having a higher frequency rate and number of total days lost.[19]

II. Coverage of Normal Pregnancy Would Increase Costs Substantially and Increase the Disproportionate Advantage to Female Workers

Calculations based on data collected by the Bell System Companies also confirms California's conclusion that the provision of benefits for normal pregnancy would substantially increase the cost of a disability program. This data also addresses the question which the court below considered unresolved,[20] indicating that coverage of normal pregnancy

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[17] *See* Wetzel v. Liberty Mutual Ins. Co., *supra* at 6-7.

[18] 374,707 for women to 66,982 for men in 1970-1971; 391,224 for women to 71,290 for men in 1971-1972.

[19] 58,785 for women to 28,951 for men in 1970-1971; 58,695 for women to 32,832 for men in 1971-1972.

[20] *See* Aiello v. Hansen, 359 F. Supp. at 798, quoted *supra* at 7.

would generate a significantly greater number of total disability days than any other category of sickness or injury, even combining the data for men and women.

Based on a substantial survey, it was determined that female Bell System employees experienced approximatly 21,700 pregnancies in fiscal year 1970-1971, and approximately 23,000 pregnancies in fiscal year 1971-1972. It is impossible to precisely fix the average term for which benefits would have been provided if normal pregnancy had been covered, since estimates of the period of actual disability connected with normal pregnancy range from less than six weeks to six months.[21] However, assuming an average duration of eight weeks,[22] normal pregnancy would have accounted for 1,215,200 disability days in 1970-1971 and 1,288,000 disability days in 1971-1972.[23] Had normal prgnancy been compensated, women, who represented 49% of the System's work force in 1970-1971, would have received benefits for 72% of the total disability days. In 1971-1972 women would have accounted for 71% of all benefit days though constituting only 48% of total employees eligible for benefits.

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[21] *See* Appendix at 6a-7a. This Court's recent decision in *Cleveland Bd. of Educ.* v. *La Fleur, supra*, recognized the "plethora of conflicting medical testimony," on the duration of any inability to work connected with pregnancy. Slip opinion at 11.

[22] This period is substantially less than the 15-week average of claims submitted to the State of California since the decision below.

[23] It is illuminating to compare these estimates with the 66,982 and 71,290 days lost by men in 1970-1971 and 1971-1972, respectively, due to all "Diseases of genitourinary system," of which prostate trouble is only a part. *See Wetzel*, discussed *supra* at 6-7.

Based on these calculations, together with the average salary and seniority of eligible women, system-wide costs for disability benefits would have been increased by $15,762,663 in 1970-1971 and $19,037,330 in 1971-1972.[24] However, the impact on the present distribution of sickness and accident disability benefits would be even more dramatic. If pregnancy had been covered in both of the survey years, 5% of eligible women, or approximately 2.5% of the System's work force, would have accounted for approximately 21% of the total days for which disability benefit payments were made. No other single disability group—even including both sexes—could generate so large a number of disability days for which benefits would be paid.[25]

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[24] Pregnancy alone would have accounted for 14.47% and 13.9% of all benefits paid in the respective survey years. These estimates reflect only basic disability costs, and do not include wage-related costs such as Social Security, pensions, health insurance, etc. Moreover, the estimate is based on the assumption of an average disability period of eight weeks. Payment for the full, average maternity leave period of 5½ months would have increased these costs to $32,739,007 and $39,539,070, respectively.

[25] The statistics from the U.S. Department of Health, Education, and Welfare, *Current Estimates from the Health Interview Survey* (1967), cited by Appellees in their Motion to Affirm at 15, will not support a contrary position. The National Health Interview Survey on which this data is based is designed to exclude absences from work due to *normal* pregnancy:

> Some readers of this series of reports have requested clarification of the content of this estimate. Although disability days are recorded only for illness and *normal pregnancy is not considered illness*, complications for pregnancy are included in this estimate when they are deemed to be illness by the respondent. Deliveries during the 2-week reference period are counted as "illness" since hospitalization is involved. Thus, days in the hospital for delivery and days of disability reported by the respondent immediately following discharge from the hospital are included with the count of restricted activity days. However, *maternity leave as such*,

III. The Low Return Rate Makes Maternity Leaves Unlike Sickness and Accident Disabilities for Job-Related Purposes

Neither the Constitution nor Title VII requires States or private employers to provide any disability benefits, and the Bell System Companies agree with the State of California's conclusion that its decision to provide protection against illness and injury should not obligate it to provide benefits for another condition which cannot properly be classified as either an illness or a disability. The Bell System Companies also agree with the State of California's conclusion that absences from work for pregnancy and childbirth are substantially different from absences caused by sickness or accident disabilities. Perhaps the most significant distinction for private employers, who consider disability benefits as part of an overall compensation package, is the difference in return rates for the workers in each category.

A survey of maternity leaves and absences caused by sickness and accident disabilities conducted by Illinois Bell in 1972 showed that only about 3% [20] of those who

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not associated with a spell of illness, is not included in the estimate.

U.S. Department of Health, Education, and Welfare, *Acute Conditions, Incidence and Associated Disability* (1970-1971) at 2, 4 (emphasis added).

Therefore, the "days of restricted activity" reported for "Deliveries and Disorders of Pregnancy and the Puerperium" in Tables 3 and 4 (Motion to Affirm, Appendix A) are more nearly comparable to the complicated and abnormal pregnancies presently covered by the California and Bell System plans (Group 11, Group 15) than to the work-loss days which would result from the coverage of normal pregnancy.

[20] The vast majority (almost 90%) of those who did not return to work following a covered disability had either died or become eligible for a company pension.

had been disabled failed to return to work while over 48% of employees who took maternity leave did not return following their leave. Projecting this estimate for the System as a whole, 7.6 and 9.1 million dollars of the estimated cost of providing maternity benefits in the respective survey years, would have gone to claimants who never returned to work. These payments would have been inconsistent with the disability programs' basic purpose of providing a bridge between periods of employment and would have constituted a unique form of severance pay.

CONCLUSION

The Bell System Companies believe that the information submitted based on the operation of their sickness and accident disability programs confirms the State of California's assertions regarding the impact of covering normal pregnancy under its disability insurance program. The inclusion of such benefits would be most expensive and would further expand the disproportionate advantage women presently enjoy in disability plan benefits. The data further demonstrates that normal pregnancy, if covered, would account for a larger amount of benefit payments than any other category of sickness or accident disabilities. Finally, data regarding the rate of return for workers following maternity leave and following disability absences, shows that the two conditions are significantly different for employment-related purposes.

Based on these considerations, the Bell System Companies contend that it is unreasonable to require a State or private employers to treat normal pregnancy as they treat sickness and accident disabilities.

They, therefore, urge that the decision of the district court be reversed.

Respectfully submitted,

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Dated February 8, 1974.

APPENDIX

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2000 L STREET, NORTHWEST
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202-466-5557

LEE SATTERFIELD
EXECUTIVE ASSISTANT AND ATTORNEY

January 28, 1974

Mr. Philip J. Davis
Director
Office of Federal Contract Compliance
U. S. Department of Labor
14th and Constitution Ave., N.W.
Washington, D.C. 20210

Dear Mr. Davis:

In response to your request, I am transmitting the enclosed data relevant to the proposed revisions to the Office of Federal Contract Compliance Sex Discrimination Guidelines, 38 Fed. Reg. 35336-35338 (Dec. 27, 1973), on behalf of the American Telephone and Telegraph Company and the Associated Bell Companies. This data focuses on proposed Section 60-20.3(h)(2), which provides in part:

> Medically verifiable disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance policies or sick leave plans available in connection with employment . . .

This section would reverse the present position of OFCC that, "There is no requirement that an employee be paid during absence [for maternity leave]." Memorandum of John L. Wilks, Director, OFCC, to Agency Heads, November 12, 1970, at 5.

Without regard to legal arguments against adoption of proposed Section 60-20.3(h)(2), which undoubtedly will be developed by other interested parties, the attached data statistically demonstrates: (1) the present treatment of men and women under the Companies' sickness and accident disability plan; (2) the cost and impact on the male and female share of disability benefits which would occur if normal pregnancy were treated as a sickness or accident; and (3) the fact that nearly half of those taking maternity leave do not return to work which sharply distinguishes the nature of their absence for employee benefit purposes from accident and sickness absences.

Based on this data, as well as the settled medical opinion that pregnancy is neither a sickness nor accident, we urge that OFCC *not* adopt proposed Section 60-20.3(h)(2), but maintain its present position that federal contractors need not provide sickness and accident benefits for pregnancy.

LEE SATTERFIELD
Executive Assistant
& Attorney

Bell System Data Relevant to Proposed Revisions in OFCC Sex Discrimination Guidelines Regarding Treatment of Absences Due to Normal Pregnancy

I. INTRODUCTION

Recently, six companies in the Bell System (Illinois, Southern, South Central, New York, Long Lines and Pacific) have been sued by parties attacking the legality of their sickness and accident disability programs. The crux of these charges is that the failure to treat normal pregnancy as a disability under sickness and accident disability programs, constitutes discrimination against female employees on the basis of sex. Other major employers,

such as General Motors, General Electric, and Delta Air Lines,[1] are facing similar legal challenges, and initial court decisions are now being rendered. For example, a federal district court in Atlanta recently held that Delta Air Lines could not require female employees to leave work at a specific time prior to delivery, but that absence due to pregnancy and childbirth need not be covered under an accident and sickness disability program. *Newmon* v. *Delta Air Lines, Inc.*, Civ. No. I5681 (N.D. Ga., Dec. 31, 1973). *But see, Wetzel* v. *Liberty Mutual Insurance Co.*, Civ. No. 72-169 (W.D. Pa., Jan. 9, 1974).

Since no company in the Bell System treats normal pregnancy as an accident or sickness disability, the implications of these pending cases will reach beyond the companies directly involved. Every company in the System will be affected by the results of these suits. In light of these legal challenges to current sickness and accident disability programs, it is appropriate to review the operation of the Bell System sickness and accident disability program and to estimate its current effect on employees and the effects which would result by treating pregnancy as a sickness or accident disability.

II. Present Disability Plans

The sickness and accident disabilities of Bell System employees are classified, for record keeping purposes, into seventeen basic groups (see Table 1) which cover every disability recognized under the various plans within the System. For example, disabilities are grouped into infective and parasitic diseases, mental disorders, diseases of the circulatory system, the digestive system, the musculoskeletal system, and even accidents, poisonings and violence. Within each of these groups, the System's

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[1] Grogg v. General Motors Corp., 73 Civ. No. 63 (KTD) (S.D. N.Y.); Gilbert v. General Electric Co., No. 142-72-R (E.D. Va.); Newmon v. Delta Air Lines, Inc., Civ. No. I5681 (N.D. Ga.).

records reflect, by sex, the frequency of occurrence of each group of disability, the number of disability absences, and the duration of these absences (see Tables 2 and 3).

An examination of the Bell System sickness and accident disability figures for the fiscal year 1970-71 (see Table 2), reveals that in sixteen of the seventeen disability group classifications the frequency rate of women absent from work was higher than for men; the number of cases of women disabled was higher than for men; and women lost more total days from work than men.[2] Finally, an examination of the severity rate (average duration) of these absences indicates that women were generally absent for a longer period than men. While women were 48.57% of the System's total work force eligible to receive disability payments as of December 31, 1970, a review of the System's disability statistics, including all disability groups, reveals that they received wage benefits for 64.65% of the total days for which such benefits were paid during fiscal year 1970-71. Thus, even without treating normal pregnancy as a sickness or accident disability, in fiscal year 1970-71 women collected benefits for a percentage of days far in excess of their percentage of the company work force. It should be recognized that wage replacement benefits were paid to women absent on account of complications of pregnancy and childbirth.[3]

Fiscal year 1971-72 reflects the same sort of pattern as 1970-71 (see Table 3). In the same sixteen of seventeen disability group classifications, women were absent at a higher rate than men; experienced more disabilities than men; and lost more days from work than men. Finally, the

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[2] The one disability group category where men are absent at a higher rate than women, experience more disabilities than women, and lose more disability days than women is diseases of the circulatory system, which includes heart attacks and similar cardiac problems. (See Tables 2 and 3.)

[3] See classifications 11 and 15, Tables 1, 2, and 3.

statistics again show that generally, when absent, women were absent for longer periods than men. Although women made up 48.29% of the Bell work force eligible for disability payments as of December 31, 1971, they accounted for 63.45% of the total days for which benefits were paid in all disability groups during fiscal year 1971-72. Again this disproportionate figure reflects the present operation of the Bell Companies' disability programs, which are under attack, and which do not treat normal pregnancy as a sickness or accident disability.

III. The Effect of Treating Pregnancy As A Sickness or Accident Disability

Since disability payments for pregnancies would be made only to women, treating normal pregnancy as a sickness or accident disability would mean that women employees would receive even greater benefits than the disproportionate benefits they already receive.

In late 1973, eight companies in the System performed a manual count of the number of maternity leaves that had been granted in 1972. These companies then compared this count with the total number of female employees as of December 31, 1972. The results are as follows:

Company	Number of Maternity Leaves Granted in 1972	Number of Female Employees as of December 31, 1972	Percent
New York	2,406	48,115	5.00
New Jersey	761	16,113	4.73
Chesapeake and Potomac	1,274	23,861	5.34
Ohio	732	13,321	5.50
Illinois	1,036	20,968	4.94
Northwestern	834	14,596	5.72
Southwestern	1,700	39,316	4.33
Pacific Northwest	533	9,969	5.35
Totals	9,276	186,259	4.98

By projecting the results of this eight company survey,[4] a fairly accurate estimate can be made of the System-wide effect of treating pregnancy as a sickness or acident disability.

The Bell System Companies employed approximately 434,400 women eligible for disability benefits in fiscal year 1970-71 (as of December 31, 1970). Assuming 5% of these women took maternity leave in that fiscal year, the System would have had to provide disability payments for approximately 21,700 pregnancies if maternity had been treated as a sickness and accident disability during this period. No figures have yet been compiled that accurately reflect the average length of maternity leave taken throughout the System; nevertheless, figures compiled by Illinois Bell indicate that within that Company the average maternity leave per pregnancy has been approximately 5½ months. Of course, it is reasonable to assume that most women would not be disabled for 5½ months as a result of normal pregnancy and childbirth. Indeed, the testimony of medical experts for both sides in a court action pending against General Electric (see note 1 *supra*) that is similar to the suits the Bell Companies are facing indicates that the total period of disability may be less than six weeks. However, two courts have held in a related context that eight weeks may be an appropriate estimate of the time necessarily lost from work due to pregnancy.[5] Using such an eight week period for calculations, and keeping in mind that the actual period could be found to be considerably

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[4] The companies involved in this court have almost 40% of the System's female employees and represent a cross section of the entire Bell System. Thus, there is no reason to believe that the composite figures presented by this survey would not be valid estimates of figures for the entire System.

[5] Health v. Westerfield Board of Education, 345 F. Supp. 501 (S.D. Ohio, 1972); Doe v. Osteopathic Hospital, 3 FEP 1128 (D. Kans., 1971).

longer, or shorter,[6] if the estimated 21,700 women who took maternity leave in fiscal year 1971 had received disability benefits for eight weeks each, an additional 1,215,200 disability days would have been covered in that year. Thus, instead of receiving benefits for almost 65% of the days for which disability payments were made, women, who represented approximately 49% of the System work force eligible for benefits during this period, would have received benefits for over 72% of the days for which disability payments were made.

Similarly, if 5% of the System's fiscal year 1971-72 female work force eligible for disability benefits, approximately 461,500 women as of December 31, 1971, had received disability benefits for maternity absence in that period, a total of approximately 23,000 pregnancies would have been covered. Assuming disability payments had been made for an average of eight weeks for each of these pregnancies, an additional 1,288,000 disability days would have been paid in 1971-72. Therefore, women, who represented approximately 48% of the System work force during that period, would have collected 71% of the total disability days.

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[6] A recent example of the conceivable magnitude of payment periods occurred in Illinois. The State Fair Employment Practices Commission awarded two claimants disability payments for the full six months of their maternity leaves. Elliott v. Turner Co., (Charge No. 72C-1155, December 12, 1973); Bennett v. Turner Co., (Charge No. 72C-1156, December 12, 1973). If the estimated 21,700 women who took maternity leaves in the System during fiscal year 1970-71 had received disability payments for the entire period of their 5½ month maternity leave (145 days), an additional 3,146,500 days of disability benefits would have been paid in the System. In other words, pregnant women would have received benefits due to their pregnancies for more disability days than all other women received for their non-pregnancy related disability absences; furthermore, pregnant women would have been paid for nearly twice as many disability days due to their pregnancies than were paid to men for all their disabilities!

If pregnancy had been covered during these periods as an eight week disability, 5% of the women, or approximately *2.5% of the System's work force, would have accounted for approximately 21% of the total days for which disability payments were made* in both fiscal years 1970-71 and 1971-72. No other single disability group—even including both sexes—could generate so large a number of disability days for which benefits would be paid.

These figures demonstrate that treating pregnancy as a sickness or accident disability would create a situation far different from the picture of "equality" painted by opponents of the present disability programs. Indeed, the statistics reveal that women employees already are receiving a significantly greater number of paid benefit days for disabilities than are male employees. Treating pregnancy as a sickness or accident disability would further reduce the percentage of disability days paid to male employees.

Moreover, there can be no doubt that the cost of treating normal pregnancy as a sickness or accident disability would be immense. Using the previously mentioned figures which were compiled in late 1973 as the basis for projection, representative costs can readily be estimated. All employees are entitled to disability wage payments on the basis of seniority. An Illinois Bell study indicates that the average seniority of women taking maternity leave is between two and five years. Employees with 2-5 years service may receive up to full wage pay for their first week of absence as a departmental expense paid by the Company. Disability plan wage payments begin on the eighth calendar day of absence. During the first four weeks of a disability period, an employee with 2-5 years of service receives full wage pay. Subsequently, for a forty-eight week period disability payments equalling one-half the weekly salary are paid.

The average weekly wage of women with 2-5 years seniority, who were employed by the System Telephone Operating Companies in fiscal year 1970-71 as of December 31, 1970, was $111.75. If eight weeks of disability benefits had been made to pregnant employees, using the average length of Company service of those taking maternity leave during this period and the average wage of these female employees during 1970-71, the cost impact of wage continuation payments that would result from treating pregnancy as a sickness or accident disability can be estimated. Given the figures discussed above, the wage costs of treating each pregnancy as an eight week disability would have been $726.39 per pregnancy.[7] The System-wide costs for all 21,700 pregnancies in fiscal year 1970-71 would have been $15,762,663 in basic wages; in other words, approximately 2.5% of the System's work force would have received 14.47% of the basic wage benefit dollar. This does not include other wage related costs such as Social Security, pensions, health insurance, etc.[8]

The figures for fiscal year 1971-72 are comparable. The average weekly wage of female employees with 2-5 years seniority, who were employed during this period as of Decembr 31, 1971 was $127.34. Assuming the same seniority and average disability figures applied to fiscal year 1970-71 above, the wage costs of treating each 1971-72 pregnancy as a sickness and accident disability would have been $827.71. The costs for all 23,000 pregnancies within

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[7] This assumes that a pregnant employee received full wages for her first week of absence (which may be paid by the Company as a departmental expense), followed by full pay for the next four weeks' absence and half pay for the last three weeks' absence under the Company's disability plan.

[8] This also does not include the cost of establishing and administering a program to determine the length of each normal pregnancy disability and the amount of disability payments to be made for each such pregnancy.

the System during this period would have been $19,037,330[9] in basic wages, not including other wage related costs. Again, had normal pregnancy been treated as a sickness and accident disability, a significant portion of the basic wage benefit dollar (13.90%) would have been concentrated in a small percentage of the work force (approximately 2.5%).

IV. Maternity Leave Return Rate

No System-wide figures indicating the precise work return rate from maternity leave and other disabilities have yet been prepared; nevertheless, Illinois Bell Telephone Company recently completed such a study. The results clearly established another factor indicating the questionable equity and financial wisdom of treating pregnancy as though it were a sickness or accident disability. The Illinois study reveals that in calendar year 1972 all but approximately 3% of those employees who were absent as a result of presently covered sickness and accident disabilities returned to work.[10] By comparison, however, during the same period more than 48% of employees who took maternity leave did not return to the Illinois Bell work force following their leave. Projecting the results of this

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[9] These figures represent an average of eight weeks disability for each pregnancy. As noted earlier, see footnote 6, this figure could be increased significantly by administrative or judicial decisions. If the entire period of an average 5½ month maternity leave were treated as a disability for purposes of the sickness and accident program, the fiscal year 1971 and 1972 costs of the Bell Companies in basic wages alone, would have been $32,739,007 and $39,539,070 respectively.

[10] The vast majority (almost 90%) of employees who did not return to work after absences as a result of presently covered sickness and accident disabilities either died or became eligible for company pensions. Only 0.57% of Illinois Bell's employees actually resigned from company service after absences presently covered by the sickness and accident disability program.

study to the entire System, the inequity of covering pregnancy as a sickness or accident disability is manifest. If the treatment of pregnancy as a sickness or accident disability would have accounted for between approximately 15.7 million dollars of basic wage benefit payments in fiscal year 1971 and 19.0 million dollars in fiscal year 1972 (assuming an eight week disability period for both fiscal years) approximately 7.6 and 9.1 million dollars of the yearly wage benefits paid in these respective fiscal years would have gone to claimants who never returned to work! These wage payments would not have served as a bridge to carry workers between periods of employment, which is the basic purpose of disability benefits, but instead would have constituted a unique form of severance pay.

V. Conclusion

The statistical evidence discussed above highlights the effects of treating pregnancy as a sickness and accident disability. An examination of this evidence raises serious doubts about the equity of so treating pregnancies. Already women receive wage benefits for days of absence as a result of sickness and accident disabilities that are greatly disproportionate to the wage continuation benefits which men receive. Treating pregnancy as a sickness and accident disability no matter how brief the average period of such disability, can only further distort this important benefit in favor of female employees. The cost impact of accomplishing this questionable result will be immense. Furthermore, the wage benefit payments received under this coverage, although amounting to millions of dollars, will inure to the benefit of only 5% of the Bell Companies' female employees—less than 2.5% of the work force. Finally, a look at the work return rates of employees taking maternity leave indicates that nearly half of the benefits paid for pregnancy would be paid to women who will never return to the System's work force.

Table 1

Sickness and Accident Summary Bell System

Group 01	Infective and parasitic diseases
Group 02	Neoplasms
Group 03	Endocrine, nutritional and metabolic diseases
Group 04	Diseases of blood and blood-forming organs
Group 05	Mental disorders
Group 06	Diseases of nervous system and sense organs
Group 07	Diseases of circulatory system
Group 08	Diseases of respiratory system
Group 09	Diseases of digestive system
Group 10	Diseases of genitourinary system
Group 11	Complications of pregnancy, childbirth and puerperium
Group 12	Diseases of skin and subcutaneous tissue
Group 13	Diseases of musculoskeletal system and connective tissue
Group 14	Congential anomalies
Group 15	Perinatal morbidity and mortality
Group 16	Symptoms and ill-defined conditions
Group 17	Accidents, poisonings and violence

Table 2

Total Bell System Sickness and Accident Figures for Fiscal Year 1970-71

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
01	M	2,726	5.9	26.3	71,647
	F	5,422	12.5	27.1	146,930
02	M	1,204	2.6	66.6	80,173
	F	4,991	11.5	55.6	277,647
03	M	745	1.6	38.9	28,951
	F	1,134	2.6	51.8	58,785

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
04	M	93	0.2	40.6	3,774
	F	535	1.2	36.7	19,634
05	M	1,527	3.3	57.2	87,285
	F	3,306	7.6	67.6	223,503
06	M	1,560	3.4	44.3	69,064
	F	2,592	6.0	42.1	109,132
07	M	4,637	10.1	69.4	321,773
	F	3,582	8.2	62.2	222,723
08	M	8,693	18.9	19.5	169,537
	F	18,397	42.3	19.2	353,955
09	M	5,488	11.9	38.1	208,816
	F	5,744	13.2	41.5	238,532
10	M	2,289	5.0	29.3	66,982
	F	11,137	25.6	33.6	374,707
11	M	—	—	—	—
	F	3,104	7.1	27.8	86,438
12	M	1,154	2.5	25.6	29,574
	F	1,617	3.7	28.6	46,319
13	M	3,941	8.6	46.4	182,686
	F	5,142	11.8	53.0	272,352
14	M	149	0.3	51.6	7,668
	F	304	0.7	42.2	12,822
15	M	—	—	—	—
	F	328	0.8	58.2	19,084
16	M	1,391	3.0	29.8	41,418
	F	2,909	6.7	34.6	100,758
17	M	5,694	12.4	37.4	212,981
	F	7,696	17.7	42.9	330,467

Days Lost	
Male	1,582,329
Female	2,893,788
TOTAL	4,476,117

Table 3

Total Bell System Sickness and Accident Figures for Fiscal Year 1971-72

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
01	M	2,594	5.2	30.4	78,904
	F	5,108	11.1	29.3	149,470
02	M	1,305	2.6	70.0	91,352
	F	5,390	11.7	57.6	310,518
03	M	719	1.5	45.7	32,832
	F	1,172	2.5	50.1	58,695
04	M	121	0.2	43.5	5,252
	F	462	1.0	43.9	20,281
05	M	1,568	3.2	62.4	97,893
	F	3,445	7.5	66.6	229,558
06	M	1,557	3.2	47.3	73,652
	F	2,584	5.6	44.7	115,477
07	M	5,007	10.1	73.0	365,723
	F	3,950	8.6	61.7	243,865
08	M	10,093	20.4	18.9	191,101
	F	21,789	47.2	18.7	408,365
09	M	5,699	11.5	39.4	224,655
	F	5,994	13.0	42.3	253,522
10	M	2,441	4.9	29.2	71,290
	F	11,262	24.4	34.7	391,224
11	M	—	—	—	—
	F	2,738	5.9	29.0	79,410
12	M	1,325	2.7	28.0	37,150
	F	1,627	3.5	30.1	48,936
13	M	4,129	8.4	49.4	203,846
	F	5,419	11.7	55.8	302,345

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness)	Total Days Lost
14	M	172	0.3	46.2	7,941
	F	339	0.7	53.5	18,119
15	M	—	—	—	—
	F	255	0.6	59.5	15,164
16	M	1,487	3.0	30.3	45,111
	F	3,103	6.7	38.0	118,036
17	M	6,597	13.3	40.0	264,127
	F	7,904	17.1	43.6	344,862

Days Lost	
Male	1,790,829
Female	3,107,847
TOTAL	4,898,676